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Report on financing of the Committee of Experts on International Cooperation in Tax Matters*

Report of the Secretary-General

Introduction

1. At its second annual session in November 2006, the Committee of Experts on International Cooperation in Tax Matters considered issues related to the financing of its work, including the work of its subcommittees and working groups. In its report to the Economic and Social Council, the Committee recommended a draft resolution for adoption by the Council, that requested the necessary actions to provide in the United Nations programme budget for the biennium 2008-2009 the additional resources needed for:

(a) Face-to-face subcommittee and working group meetings with special reference to ensuring the full and effective participation of members of those subcommittees from developing countries, and countries with economies in transition and with priority given to subcommittees on permanent establishment and improper use of treaties;

(b) Capacity-building workshops in developing countries, and countries with economies in transition.

2. A statement of programme budget implications of the recommendations contained in the Committee's report was prepared for consideration by the Economic and Social Council at its resumed substantive session in October 2007. Having considered the report and recommendations of the Committee and the statement of budgetary implications, the Council, in its resolution 2007/39, requested the Secretary-General to prepare a comprehensive report addressing the

* The submission of the present report was delayed owing to the fact that it was mandated late in 2007 (the resumed substantive session of the Council) and required extensive consultations between the Department of Economic and Social Affairs and the Programme Planning and Budget Division.

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financing of the Committee's work, including that of its subcommittees, taking into account the issues raised by the Committee at its second session, for consideration by the Council at its organizational session for 2008.

Background

Establishment and mandate of the Committee

3. In its resolution 2004/69, subparagraph (d), the Economic and Social Council established the Committee of Experts on International Cooperation in Tax Matters with a mandate to:

> "(i) Keep under review and update as necessary the *United Nations Model Double Taxation Convention between Developed and Developing Countries*[1] and the *Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries*;[2]
>
> (ii) Provide a framework for dialogue with a view to enhancing and promoting international tax cooperation among national tax authorities;
>
> (iii) Consider how new and emerging issues could affect international cooperation in tax matters and develop assessments, commentaries and appropriate recommendations;
>
> (iv) Make recommendations on capacity-building and the provision of technical assistance to developing countries and countries with economies in transition;
>
> (v) Give special attention to developing countries and countries with economies in transition in dealing with all the above issues."

4. The Committee is comprised of 25 members nominated by Governments and acting in their personal capacity. The members, who are appointed by the Secretary-General after notification to the Council, for a term of four years, are drawn from the fields of tax policy and tax administration and are selected to reflect an adequate equitable geographical distribution, representing different tax systems. The current members of the Committee will complete their terms at the end of June 2009.

5. The Committee meets for five working days in Geneva for its annual session.

6. The Committee has focused so far on updating the *United Nations Model Double Tax Convention between Developed and Developing Countries* (2001) — including its Commentaries on the text of the Model — and the *Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries* (2003). This focus is the result of a combination of the limited resources available to the Committee and the urgent need to update both publications to take account of modern developments, such as the rise of electronic commerce and the increased importance of internationally traded services, as well as challenges such as the proliferation of international tax planning, with an attendant impact on development.

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[1] United Nations publication, Sales No. 01.XVI.2 (most recent issue).

[2] ST/ESA/PAD/SER.E/37 (most recent issue). Previous issue: United Nations publication, Sales No. E.79.XVI.3.

7. The Committee is the only truly global tax forum, and is operating in a cooperative and results-focused manner. In its work in updating the United Nations Model and Manual, the main achievements have been:

(a) Completion of an important new article (with Commentary) for inclusion in the next version of the Model on mutual assistance in the collection of tax debts;

(b) Substantial completion of a revised commentary to article 5, which deals with the business "footprint" of an establishment in a country that is necessary to support taxation of profits by that country (the "permanent establishment principle"). The updates take into account developments, such as the rise of electronic commerce, but also clarify the practical operation of the article in tax treaties based on the United Nations Model;

(c) An agreed approach on the application of tax treaties to Islamic financing instruments, with amendments to the Model and the Manual to follow;

(d) Near completion of a subcommittee's work on the "improper use of tax treaties" which considered such issues such as the nature of, and responses to, tax treaty abuse and the relationship between tax treaty obligations and domestic anti-abuse laws.

8. There have also been initial papers and discussions on the issues of improving dispute settlement in international tax matters, improving exchange of information provisions (including a possible code of conduct against tax evasion) and general updating of the Manual and Commentaries.

9. The Committee's annual session has also been a forum where proposals by the International Tax Dialogue parties (in particular, the International Monetary Fund and the Organization of Economic Cooperation and Development) have received comments on the issue of taxation of development projects — i.e., the issue of whether or not there should be tax exemptions for such projects.

10. The Committee is supported by a small and dedicated technical secretariat made up of one Senior Economic Affairs Officer (P-5) and one Economic Affairs Officer (P-3). A General Service staff member provides part-time secretarial and administrative support. The Chief of the Policy Analysis and Development Branch of the Financing for Development Office (D-1) has overall supervisory responsibility for that work and serves as Secretary to the Committee. The secretariat is responsible for the preparation for and follow-up to the annual Committee sessions and intersessional meetings of its subcommittees and working groups. It prepares papers as requested by the Committee, assists the subcommittee and working groups in preparing papers for consideration by the Committee, liaises with Committee members and observers on development relevant to its work, prepares advice and reports on the work of the Committee, including with other areas of the Secretariat. It also provides inputs on tax matters into reports on financing for development issues, and organizes expert group meetings, round tables, panel discussions, seminars and briefing on taxation and development issues, as well as side events at sessions of the Economic and Social Council.

11. The present report addresses the funding of two key areas of the work of the Committee of Experts on International Cooperation in Tax Matters, namely: (a) its working methods, specifically the work of its subcommittees and working groups; and (b) capacity-building activities, which the Council has invited the Committee to

address in support of developing countries and countries with economies in transition.

A. Working methods of the Committee

12. At its first session, in 2005, the Committee agreed to create, as necessary, ad hoc subcommittees to work throughout the year under the guidance of the Bureau and with the support of the secretariat to prepare the agenda items and determine the supporting documentation, including requests for papers by independent experts, for consideration at the regular session of the Committee. The subcommittees and working groups are comprised of members of the Committee and independent experts with specialized skills in the respective fields of taxation.

13. By its resolution 2006/48, the Economic and Social Council noted the creation of four subcommittees on substantive matters, namely, improper use of treaties (formerly named "treaty abuses"), mutual assistance in collecting tax debts, the definition of permanent establishment, and exchange of information, and two working groups, on international tax arbitration and the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries.

14. At its second annual session, held in 2006, the Committee established a new Subcommittee on Dispute Resolution (replacing the former working group on tax arbitration) and a new working group on Islamic financial instruments, while the Subcommittee on Mutual Assistance in Collecting Tax Debts completed its work. At its third annual session, held in 2007, the Committee established a new Subcommittee on Islamic Financial Instruments (replacing the former working group on Islamic financial instruments) and a new Working Group on General Issues in the Review of the Commentaries (replacing the former task force on revision of the Commentaries). It should be noted that as subcommittees and working groups complete their work, they are expected to be reconstituted to deal with other aspects of updating the United Nations Model Tax Convention and addressing other emerging tax cooperation issues.

15. There are currently seven subcommittees and working groups, dealing with the following issues:

(a) Subcommittee on the Improper Use of Treaties;

(b) Subcommittee on the Definition of Permanent Establishment;

(c) Subcommittee on the Exchange of Information, including a possible code of conduct on cooperation in combating international tax evasion;

(d) Working Group on the Revision of the United Nations Manual on the Negotiation of bilateral tax treaties;

(e) Subcommittee on Dispute Resolution;

(f) Subcommittee on the Treatment of Islamic Financial Instruments;

(g) Working Group on General Issues in the Revision of Commentaries (a task force which was reconstituted as a working group at the Committee's third annual session, in 2007).

16. In its resolution 2006/48, the Economic and Social Council recognized that in order to deal with issues relating to the agenda on a continuous basis, subcommittees should use electronic communications where possible, but that the efficient operation of these subcommittees may in future require some face-to-face meetings. The need for such meetings was to be determined by the coordinator of the subcommittees and working groups. While they have extensively utilized electronic communication so far, the Committee's most recent report reflects its view that the time has come for these face-to-face meetings as they confront some of the more intricate technical issues and legal concepts.

17. Two such meetings were held in 2007 for the Subcommittees on Improper Use of Treaties (Beijing, April 2007) and Permanent Establishments (Oslo, June 2007).[3] These meetings were held because of a strong agreement on the need to resolve both broader differences and other drafting issues that become critical in a document that legislators, administrators, taxpayers and judges are likely to look very closely at when interpreting tax treaty provisions based on the United Nations Model.

18. In rewriting the United Nations Model Tax Convention and Commentaries, the Committee relies heavily upon subcommittees and working groups to present options and specific wording that must be closely analysed by the Committee as a whole. Furthermore, the Committee is quite keen to have a redrafted United Nations Model Tax Convention and Commentaries ready by mid-2009, before the completion of the term of its current membership, which is scheduled for the end of June 2009.

19. The subcommittee meeting on improper use of treaties was held in Beijing, from 4 to 7 April 2007, and was attended by four subcommittee members, supported by a staff member from the Secretariat. Two subcommittee members were not able to attend while a third member was able to participate via telephone conference for one hour. The subcommittee meeting on the definition of permanent establishment, held in Oslo, on 14 and 15 June 2007, was attended by five subcommittee members and supported by one staff member from the Secretariat. Four of the subcommittee's members were not able to participate in the meeting. The second meeting of the Subcommittee on Permanent Establishment Issues took place from 11 to 13 February 2008, in Cape Town, South Africa. Four of the eight subcommittee members participated in the meeting supported by one staff member from the Secretariat.

Funding for working methods of the Committee

20. An amount of $324,600 has been appropriated under section 9 Economic and social affairs, of the programme budget for the biennium 2008-2009 to support the participation of the members of the Committee at its annual sessions held in Geneva. That amount covers air tickets and daily subsistence allowance entitlements for the 25 members of the Committee. No fees or honoraria are paid to the members of the Committee for any work undertaken for the United Nations.

21. No funds have been appropriated under the regular budget for the intersessional meetings of the subcommittees and working groups. For the meetings held in 2007, the subcommittees have had to rely on the goodwill of its members,

[3] The work done at these two subcommittee meetings is outlined in documents E/C.18/2007/CRP.2, E/C.18/2007/CRP.3 and Corr.1, and E/C.18/2007/CRP.4, which were presented at the third session of the Committee of Experts (see un.org/esa/ffd/tax).

and on funding by their employers to ensure full participation. That creates some tension between the role of Committee members as experts acting in their own personal capacities and their reliance on their employers' financial support. That situation has also put experts from developing countries at a disadvantage, resulting in their non-participation at the face-to-face meetings. The lack of financial support for those meetings is also viewed by some employers as an indication that they are not regarded as central to the work of the Committee, despite the significance the Committee has given them in its reports. The Committee has therefore called for limited funding to enable the meetings to be held with full participation of developing countries and countries with economies in transition, and to ensure that their interests and perspectives are taken into account in the preparation of the papers that may impact upon international tax norms, as envisioned in Economic and Social Council resolution 2004/69.

22. On average, the subcommittees and working groups convene for two days of consultations on various issues in relation to their areas of focus in preparation for the regular sessions of the Committee.

23. On that basis, the average cost per meeting of the six subcommittees and working groups over the biennium is estimated at $27,600, which covers travel and per diem costs for their members. It is envisaged that six of the seven subcommittees and working groups will convene during the biennium as the recently constituted Working Group on General Issues in the Revision of Commentaries will not require face-to-face meetings during that period. In the future, should the Committee deem it necessary for the Working Group to conduct face-to-face consultations, it may have the Working Group meet instead of another group in a particular year. In that connection, there would be an additional requirement of $35,000 over the biennium to cover travel and per diem costs of one staff member to participate in 10 of the 12 meetings, with the other 2 meetings expected to be held in New York, where the substantive secretariat is based. During the course of the biennium, a total amount of $367,000 would therefore be required to cover a total of 12 meetings of subcommittees and working groups, as calculated in the programme budget implications document (E/2007/L.16).

24. In reviewing funding options to support the Committee's working groups and subcommittees, the Council may wish to consider the following:

(a) Providing additional regular budget resources for all 12 intersessional meetings of the subcommittees and working groups of the Committee. That approach will ensure representation from developing countries in the meetings since currently such participation is possible only on the basis of third-party sponsorship.

(b) Alternatively, the Council may wish to consider funding from the regular budget only a fixed number of intersessional subcommittee and working group meetings for the biennium — e.g., up to 10 meetings (5 per year). That would provide the Committee the flexibility to prioritize which subcommittees and working groups would meet once or twice during a biennium, depending on the agenda of its next session or the substantive issues that are of concern to the Committee.

(c) While funding the work of the subcommittees and working groups through voluntary contributions is an option, that approach presents significant challenges. The uncertainty of the level of voluntary contributions makes it difficult

to plan the activities of the various subcommittees and working groups and does not guarantee adequate representation from developing countries. In addition, voluntary contributions may be earmarked for specific subcommittees or working groups only, thereby resulting in uneven progress among the various subcommittees and working groups.

B. Capacity-building activities in support of developing countries and countries with economies in transition

25. In resolution 2006/48, the Council also invited the Committee to organize training workshops for developing countries and countries with economies in transition as part of the work required to carry out its mandate, which includes making recommendations on capacity-building and providing technical assistance. That request was reiterated in the draft resolution suggested by the Committee in 2006 and in the forthcoming report of the Committee's 2007 annual session.

Funding for capacity-building activities

26. As expressed in the statement of programme budget implications (E/2007/L.16) prepared in support of the Council's consideration of the report on the second session of the Committee of Experts on International Cooperation in Tax Matters, $450,000 in voluntary contributions will be required to conduct at least five regional training workshops during the biennium 2008-2009 and to cover the cost of travel and per diem of workshop participants, expert trainers and staff members, including other logistical workshop-related costs.

27. The recommendation to deliver those capacity-building workshops was raised in the reports on all sessions of the Committee, and is in keeping with the mandate of the Committee to make recommendations on capacity-building and the provision of technical assistance to developing countries and countries with economies in transition.

28. In addition to offers from Member States to host such capacity-building activities, most of those capacity-building activities are to be funded through voluntary contributions to the trust fund for tax cooperation matters referred to in Economic and Social Council resolution 2007/39. Despite frequent calls for contributions, to date no funds have been pledged in support of that activity. In that regard, the nature of voluntary contributions may not guarantee the necessary level of funding to ensure a consistent programme of capacity-building activities in support of developing countries and countries with economies in transition. The Council may wish to further encourage Member States to make contributions to the trust fund.